

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

**GREGORY SEWELL and
JOHN DOES 1-10**

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PLAINTIFFS

v.

Civil No. 1:23-cv-50-HSO-BWR

**FRANK ZHANG;
BAYWAVELAND PROPERTIES,
LLC; and NICOLE COUSIN**

DEFENDANTS

**ORDER DISMISSING PLAINTIFFS' CLAIMS AGAINST DEFENDANT
NICOLE COUSIN WITHOUT PREJUDICE PURSUANT
TO FEDERAL RULE OF CIVIL PROCEDURE 4(m)**

This matter is before the Court sua sponte pursuant to Federal Rule of Civil Procedure 4(m) due to Plaintiffs' failure to serve Defendant Nicole Cousin with process. For the reasons that follow, the Court will dismiss Plaintiffs' claims against Defendant Nicole Cousin without prejudice.

I. DISCUSSION

Federal Rule of Civil Procedure 4(m) provides that

[i]f a defendant is not served within 90 days after the complaint is filed, the court--on motion or on its own after notice to the plaintiff--must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Fed. R. Civ. P. 4(m). "Rule 4(m) requires dismissal if a defendant is not served within 90 days after the complaint is filed, unless the plaintiff shows good cause for the failure." *Lewis v. Sec'y of Pub. Safety & Corr.*, 870 F.3d 365, 369 (5th Cir. 2017).

Plaintiffs Gregory Sewell and John Does 1-10 filed their Complaint [1] on February 22, 2023. *See* Compl. [1]. Cousin is the only Defendant remaining in this case. *See id.*; Order [5]. On June 5, 2023, because more than 90 days had passed and no summons has been issued nor proof of service filed for Cousin, the Court sua sponte entered an Order [6] pursuant to Rule 4(m) requiring Plaintiffs to properly serve Cousin in the manner required by Rule 4 and file proof of proper service with the Clerk of Court, all by July 5, 2023. *See* Order [6] at 2. The Court warned that, “[o]therwise, Plaintiffs Gregory Sewell’s and John Does 1-10’s claims against Defendant Nicole Cousin may be dismissed without prejudice and without further notice to Plaintiffs.” *Id.*

Plaintiffs, who are represented by counsel, have not caused a summons to issue for Cousin, filed any proof of service, or responded to the Order [6]. Nor have Plaintiffs ever requested additional time to serve Cousin.

The Complaint [1] was filed 138 days ago. *See* Compl. [1]. Plaintiffs failed to serve Cousin either within the time provided in Rule 4(m) or within the additional time afforded by the Court for service, and Plaintiffs have not shown good cause for their failure.¹ *See* Fed. R. Civ. P. 4(m); Order [6] at 2. In accordance with Rule 4(m), the Court will dismiss Plaintiffs’ claims against Cousin without prejudice. *See* Fed. R. Civ. P. 4(m); *Lewis*, 870 F.3d at 369.

¹ Plaintiffs have not filed anything in the record since the Complaint [1] and a Motion [2] to Certify Class Action were both filed on February 22, 2023. *See* Compl. [1]; Mot. [2].

II. CONCLUSION

IT IS, THEREFORE, ORDERED AND ADJUDGED that, Plaintiffs Gregory Sewell's and John Does 1-10's claims against Defendant Nicole Cousin are **DISMISSED WITHOUT PREJUDICE** pursuant to Federal Rule of Civil Procedure 4(m).

SO ORDERED AND ADJUDGED, this the 10th day of July, 2023.

s/ Halil Suleyman Ozerden

HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE